

## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 5683  
BRYAN L. KENNEDYCASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM**SENSITIVE**

## GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal.<sup>1</sup> The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5683 as a low-rated matter. In this case, the allegations concerned the alleged use of a campaign committee's cell phone by the candidate in the course of his employment with a state university. The respondent specifically denied the allegation and claimed the cell phone at issue was his personal property. The respondent provided his cell phone records evidencing he was the owner of the phone. Also, the respondent stated that his committee only reimbursed him for cell phone expenses related to his campaign.

Thus, in reviewing the merits of MUR 5683 in furtherance of the Commission's priorities and resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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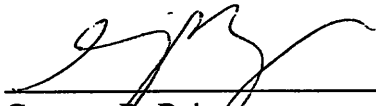
**RECOMMENDATION**


The Office of General Counsel recommends that the Commission dismiss MUR 5683, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

James A. Kahl  
Deputy General Counsel

3/21/16  
Date

BY:

  
\_\_\_\_\_  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
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Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5683

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4 **MUR 5683**

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6 **Complainant:** Ross deRozier-Alves

7  
8 **Respondents:** Bryan Kennedy for Congress and  
9 Ruth Page Jones, as Treasurer  
10 Bryan L. Kennedy  
11

12 **Allegations:** The complainant alleges that in the fall of 2004, respondent Bryan  
13 Kennedy, a professor at the University of Wisconsin-Milwaukee ("UWM") and a  
14 candidate for Congress, used his campaign cell phone, which provided callers with a  
15 campaign message recording, for personal use. Specifically, Mr. Kennedy allegedly  
16 scheduled interviews for hiring an instructor on behalf of UWM using his campaign  
17 committee's cell phone.  
18

19 **Responses:** Mr. Kennedy responded by noting that he personally owned the cell phone  
20 at issue in the matter. Further, he used the cell phone in the course of hiring one  
21 instructor because he expected to be unreachable by other means when a return call was  
22 expected. Additionally, the Bryan Kennedy for Congress Committee only paid for those  
23 portions of Mr. Kennedy's cell phone bill that was attributed to campaign use.  
24

25 **General Counsel Note:** The complainant in this matter was interviewed by  
26 Mr. Kennedy for a night instructor position at UWM, where Mr. Kennedy also serves as a  
27 professor. As a result of not receiving an appointment as an instructor, the complainant  
28 filed two lawsuits against UWM (a discrimination action in connection with the hiring  
29 action and a related criminal complaint filed with the State Attorney General's Office).  
30 The materials concerning the lawsuits were included in the complainant's submission.  
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32 **Date complaint filed:** October 31, 2005  
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34 **Response filed:** December 14, 2005

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